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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,469	07/23/2003	Iftikhar Khan		1468

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HARNESS, DICKEY & PIERCE, P.L.C.
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EXAMINER

STIGELL, THEODORE J

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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06/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/604,469	Applicant(s) KHAN, IFTIKHAR	
	Examiner Theodore J. Stigell	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/14/2007 has been entered.

Specification

The amendments to the Specification filed 3/17/2004 and 12/14/2006 have not been entered.

The amendments to the Specification filed 5/14/2007 have been entered. In order to clear the record, the amendments will replace paragraph [0006] of the originally filed specification.

Drawings

The objections to the Drawings have been withdrawn in light of the amendments to the Specification, filed 5/14/2007.

Election/Restrictions

Newly submitted claims 18-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The apparatus recited in claims 10-17 can be used in a materially different process other than

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removing obstructive material from the oropharynx and trachea such as emboli aspiration or for use as a urinary catheter or a gastronomy tube.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Applicant is claiming "a length sufficient to engage the oropharynx and the distal bronchi of the patient" but has not disclosed in the specification what this length is. Therefore, one skilled in the art would not know what length the Applicant is referring to.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are deemed to be indefinite because the Applicant is claiming "a length sufficient to engage the oropharynx and distal bronchi of the patient". It is impossible to determine the metes and bounds of the claim because it is impossible to determine the length. The length would differ from patient to patient (i.e., the length in an adult patient would be much greater than the length in an infant patient). Furthermore, it is unclear if the length has to be sufficient to just reach the oropharynx or the distal bronchi as well. Claim 14 is indefinite as well because the Applicant is defining the diameter of the catheter and tubing by the size of a food bolus, which can practically be an endless amount of sizes. For the purposes of this rejection, the Examiner is interpreting the limitation to mean that the catheter has any length, which all catheters have.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pell et al. (4,850,348). Pell discloses an orotracheal suction system that can be used for suctioning material from the oropharynx and the trachea of a patient comprising a catheter (13) having a distal end and a proximal end, and a length

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sufficient to engage the oropharynx and distal bronchi (Figure 1 clearly shows a length that is sufficient to engage the oropharynx and the trachea (19) and would be sufficient to reach the distal bronchi in smaller patients), a seal (31) at the distal end of the catheter, an extension tubing (not numbered, clearly shown in Figure 1 attached to 82) operable for attachment to the catheter proximal end and extending a distance away from the patient's head and mouth, a reservoir (the suction source, column 5, line 33) operable to connect to the extension tubing and collect obstructive materials using a vacuum source, wherein the reservoir comprises an entry compartment and a second compartment as all reservoirs do, wherein the catheter and extension tubing have diameters, the catheter having a diameter between 0.5 Fr to about 15 Fr, and wherein the seal comprises a balloon (31) and the catheter further comprises a balloon port (33) to inflate the balloon.

Claims 10-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Joseph (5,819,723). Joseph discloses an orotracheal suction system that can be used for suctioning material from the oropharynx and the trachea of a patient comprising a catheter (100) having a distal end and a proximal end, and a length sufficient to engage the oropharynx and distal bronchi (claim 10), a seal (150) at the distal end of the catheter, an extension tubing (404) operable for attachment to the catheter proximal end and extending a distance away from the patient's head and mouth, a reservoir (402) operable to connect to the extension tubing and collect obstructive materials using a vacuum source, wherein the reservoir comprises an entry compartment and a second compartment as all reservoirs do, wherein the reservoir has a grid and a removable

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disc, wherein the catheter and extension tubing have diameters, the catheter having a diameter between 0.5 Fr to about 15 Fr, and wherein the seal comprises a balloon (31), the catheter further comprises a balloon port (33) to inflate the balloon, and wherein the tubing has a length from about 3 feet to 5 feet.

Response to Arguments

Applicant's arguments filed 5/14/2007 have been fully considered but they are not persuasive. See new rejections.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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